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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,782	10/02/2003	David M. Martinez	28076/SV1111	9585

4743 7590 01/11/2005

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EXAMINER

WILLIAMS, MARK A

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/677,782

Applicant(s)

MARTINEZ ET AL.

Examiner

Mark A. Williams

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-9, 12, 13, 15, 16, 18-23, 25, 26, 29 is/are rejected.
- 7) ☒ Claim(s) 6,10,11,14,17,24,27 and 28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application (PTO-152) |
| 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) ☐ Other: ____. |

DETAILED ACTION

Claim Objections

1. Claim 9 is objected to because of the following informalities: it depends from itself. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In is unclear in the context of the claims how and in what way is the bead hollow and has a rectangular shape.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 5, 7, 9, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Wittke, Jr., US Patent 2,049,344. A combination caster assembly and tank wherein the caster assembly snap fits onto the tank, the combination comprising at least one caster assembly comprising a housing 10 comprising an outer shell connected to at least one caster wheel 30, the outer shell also being connected to an outer wall 20, the outer wall extending downward from the outer shell before terminating at a u-shaped lower edge 52 connected to and disposed between the outer wall and an upwardly extending inner wall, the outer wall being connected to an inwardly extending ledge disposed above the u-shaped lower edge and which extends towards the inner wall, the outer wall, u-shaped lower edge, inner wall and ledge of the caster housing defining a female receiving area, a tank 24 comprising an outer wall that extends downwardly and terminates at a radially outwardly extending lower bead 22, the lower bead being disposed between and connected to the outer wall of the tank and an upwardly extending inner wall of the tank, the bead of the tank snap fitting into the female receiving area of the caster housing. A radially inwardly extending lip 10 and the inner wall of the tank is connected to a radially inwardly extending bottom panel, the bottom panel of the tank being disposed on top of the lip of the caster housing when the bead of the

tank is snap fitted into the female receiving area of the caster housing. The tank is hollow. The tank is fabricated from sheet metal.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittke. Wittke discloses the claimed invention except for molded plastic material, as claimed. Such materials are very old and well established in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in this way, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331. Such a modification is not critical to the design and would have produced no unexpected results.

7. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittke in view of Shepherd, US Patent 2,483,241. Although Wittke teach just a shell housing of a flat plate, it is known in the art that such caster housing can take on different shapes. Shepherd discloses a caster housing of the claimed design for providing a caster guard. It would have been obvious at the time the invention was made for one skilled in the art to have included in the design of Wittke such a modification, as generally shown in Shepherd, for the purpose of providing a caster guard, thereby protecting the caster wheel from abutting surfaces or vice versa.

8. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittke. Wittke does not explicitly teach indication marking, as claimed. It would have been an obvious matter of design choice to make the different portions of the device with such markings of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Such a modification is not critical to the design and would have produced no unexpected results.

9. Claims 19-23, 25, 26, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wittke in view of Gierer et al., US Patent 5,924,165. Wittke discloses all the limitations of these claims (note the above rejections) except for the device being used with a vacuum cleaner, as claimed. Gierer does teach a caster housing of a concave design used with a vacuum cleaner. It would have been obvious to have modified the caster housing attachment design of Wittke so that it could be used in a vacuum cleaner, such as that as generally taught by Gierer, for the purpose of gaining the benefit of the snap-fit removable caster housing assembly, for ease in assembly or replacement of caster housing assembly.

Allowable Subject Matter

10. Claim 30 is allowed.

11. Claims 6, 10, 11, 14, 17, 24, 27, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

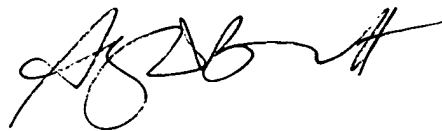
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (703) 305-3438. The examiner can normally be reached on Monday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Williams
1/6/05



Suzanne Dino Barrett
Primary Examiner